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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/493,887	01/28/00	ETTNER	Petersdorf G

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HM11/0720

EXAMINER
STEADMAN, B

ART UNIT	PAPER NUMBER
1652	6

DATE MAILED: 07/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/493,887

Applicant(s)

ETTNER ET AL.

Examiner

David J. Steadman

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

## **DETAILED ACTION**

### ***Status of the Application***

Claims 1-20 are pending in the application.

The instant Office action is a supplemental restriction requirement. The previous Office action (Paper No. 5) was a restriction requirement of pending Claims 1-20. Applicants' election with traverse of Group I, drawn to protein-containing hydrogels and processes of producing said hydrogels is acknowledged.

The traversal is on the grounds that searches for both Groups I and II would not result in a serious search burden on the Examiner. Upon reconsideration of the previous restriction requirement, the Examiner agrees that the claims of Groups I and II should be rejoined because the hydrogel of Group I would obviate the bandages, etc. comprising a hydrogel of Group II.

This supplemental restriction requirement is at the discretion of the Examiner (see MPEP 802 and 37 CFR 1.142) and is deemed appropriate and necessary in view of the multiple inventions included in the claims.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4 and 11-16, drawn to antibody-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.
  - II. Claims 1-4, 9, 11-16, and 20, drawn to protease-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses,

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plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.

- III. Claims 1-4, 10, and 11-16, drawn to enzyme inhibitor-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.
- IV. Claims 1-5 and 11-16, drawn to free radical scavenger protein-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.
- V. Claims 1-4, 6, and 11-17, drawn to antimicrobial protein-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.
- VI. Claims 1-4, 7, 11-16, and 18, drawn to phosphorylating protein-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.
- VII. Claims 1-4, 8, 11-16, and 19, drawn to growth factor protein-containing hydrogels, processes for producing said hydrogels and a wound dressing, bandages, compresses, plasters, sheets and films comprising said hydrogel, classified in class 424, subclass 94.1.

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2. The inventions are distinct, each from the other because:

The hydrogels of Groups I-VII are related as protein-containing hydrogels. However, the hydrogels of Groups I-VII are unrelated because each Group represents a hydrogel containing polypeptides or enzymes characterized as having distinct functional properties and/or catalyzing unique reactions. Therefore, each of the hydrogels of Groups I-VII would not obviate the other and are patentably distinct, each from the other.

3. Because these inventions are distinct for the reasons given above, restriction for examination purposes is proper. *"For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP 808.02"* (see MPEP 803). The serious burden of search has been established by the patentably distinct subject matter requiring divergent literature (patent and non-patent) searches.

Claims 1-4 and 11-16 are linking claims. These claims will be examined only to the extent they read on the elected subject matter.

Applicant is advised to amend claims of the instant application to reflect Applicants' elected invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a petition under 37

CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Certain papers related to this application may be submitted to Art Unit 1652 by facsimile transmission. The FAX number is (703) 308-4242. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If Applicant submits a paper by FAX, the original copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Friday from 7:30 am to 2:00 pm and from 3:30 pm to 5:30 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman

  
REBECCA E. PROUTY  
PRIMARY EXAMINER  
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